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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/171388

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 14, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on May 10, 2016, at Elkhorn, Wisconsin.

The issue for determination is whether [REDACTED], a privately contracted agency, correctly denied the Petitioner's request for coverage of orthodontic treatment.

NOTE: The record was held open until May 17, 2016, to give Petitioner's mother an opportunity to submit a copy of a denial letter from fee for service Medicaid, as well as clinical documentation concerning prior attempts to use conventional orthodontic treatments. On May 17, 2016, Petitioner's mother submitted a fax packet containing the Petitioner's orthodontic records. They have been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
Milwaukee, WI 53214

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Ann [REDACTED] Area Associate Director

[REDACTED]  
[REDACTED]  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Walworth County.
2. Petitioner's desired outcomes, as stated in her Individual Support and Services plan are to, "improve my muscle tone and posture...to have activities that help to calm me..; "be safe in my home and in the community...; and "to increase my self care skills..." (Exhibit K)
3. On December 14, 2015, the Department of Health Services sent the Petitioner a notice, indicating that her request for coverage of Invisalign Braces was denied. (Exhibit 1; Exhibit B, pgs. 3-4)
4. The Petitioner's mother, on Petitioner's behalf, submitted a request for fair hearing that was received by the Division of Hearings and Appeals on January 14, 2016, (Exhibit 1)
5. Petitioner turned 20 years old in 2014. (Testimony of Petitioner's mother; Exhibit H)
6. In April 2015, Petitioner's orthodontist submitted something to Medicaid to obtain coverage for orthodontic treatment for petitioner, but was informed that Petitioner had no coverage after age 19. (Exhibit 4, pg. 23)
7. Petitioner's private dental insurance has covered approximately \$1000 of the estimated \$6000 cost of the requested braces. (Testimony of Petitioner)
8. Petitioner has Seckel Syndrome, is intellectually delayed, and blind. (Exhibit 4; Exhibit H)
9. The Long Term Care Functional Screen indicates that due to her diagnosis of Seckel Syndrome, "her lower jaw is smaller than her top jaw which makes chewing food difficult and she needs to be monitored for choking," and she needs her food cut into small pieces, as well as reminders to chew her food thoroughly before swallowing. (Exhibit H4)

### **DISCUSSION**

The Petitioner receives medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

The IRIS program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to

which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

In furtherance of implementing these laws, the IRIS program has developed various policies regarding funding of goods and services. These policies are found in the IRIS Policy Manual<sup>1</sup>, the IRIS Service Definition Manual<sup>2</sup>, the IRIS Policy Manual:Work Instructions<sup>3</sup>, and the Application for a §1915(c) Home and Community Based Services Waiver (WI.0484.R01.06)<sup>4</sup>.

█████ asserts that Petitioner's request for coverage of orthodontic services, in particular Invisalign braces, cannot be covered because the Petitioner obtained the service before requesting coverage and because orthodontic services are covered by Medicaid. █████ also claims that the orthodontic work cannot be covered because it is not part of Petitioner's Individual Support and Service Plan.

*Petitioner's Individual Support and Service Plan*

█████'s argument that a new service cannot be provided if it is not in the Individual Support and Service Plan is a bit circular and shows a misunderstanding of the Federal Regulations. Indeed, a person would never get a new service, unless the Individual Support and Service Plan were amended to include that service.

42 CFR §441.482 describes permissible purchases in self-directed waivers programs:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

Here, Petitioner's goals include being safe in her home and community. Given that Petitioner's dental deformities cause her to be at risk of choking, it is reasonable to conclude that correcting her severe malocclusion will increase her safety when she is eating at home and in the community and is, therefore, linked to the established goals of Petitioner's service plan.

Moreover, if Petitioner can eat safely, she will be less dependent upon another human being for eating, since she will have improved mastication and will not need as much supervision to make sure she doesn't choke on her food. This meets another goal of the Petitioner's service plan, to be less dependent upon others for self-care.

Accordingly, it is found that coverage of the braces is permissible under 42 CFR §441.482, since the service ties into the goals stated in Petitioner's Individual Support and Service Plan and because the resulting benefit of the braces will make the Petitioner less dependent upon human assistance.

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<sup>1</sup> The IRIS Policy Manual can be found on-line at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>

<sup>2</sup> The IRIS Service Definition Manual can be found at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>

<sup>3</sup> The IRIS Policy Manual: Work Instructions can be found at:  
<https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf>

All manuals can also be accessed through the █████ website: <http://www.tmgwisconsin.com/iris-consultant-agency-ica/program-materials-and-forms/>

<sup>4</sup> The application for HCBS Waiver can be found on-line at: <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. Portions of the application are included in Exhibit C1-C2.

*Timing of Service Request*

With regard to when Petitioner requested coverage of the Invisalign braces, it is undisputed that the Petitioner has the braces now. However, Petitioner's mother testified credibly that she spoke to the Petitioner's IRIS Consultants (she had two during the time in question) and made several requests for coverage of the braces over the last few years, before things became time critical and the Petitioner needed to proceed with treatment to avoid losing partial coverage from her private dental insurance. According to Petitioner's mother, the Petitioner got the Invisalign braces while IRIS was processing her last request for coverage of the braces.

█ has provided no reliable evidence to prove its claim that the Petitioner got the braces, then made a request for coverage. As such, █ cannot prove that the Petitioner got the braces first, then asked for coverage.

Even if Petitioner did get the braces before seeking coverage from the IRIS program, █ has not provided any authority for its claim that Petitioner needed to wait for approval from █ before proceeding with treatment, and a cursory review of the various policy manuals has yielded no law or policy prohibiting the Petitioner from seeking coverage of the braces, after having received them.

I note to Petitioner's guardian, however, that they took a considerable risk, since Petitioner would likely be liable for the remaining cost of the braces, if they were deemed an impermissible expenditure under the IRIS Waiver Program.

*Impact of Medicaid Coverage*

Orthodontic services fall under the definition of "Counseling and Therapeutic Services", which include, "the provision of professional, treatment-oriented services to address the participant's identified needs for physical, medical, personal, social behavioral, cognitive, developmental, emotional or substance abuse treatment. The goal of treatment is to maintain or improve participant health, welfare or functioning, in the community." *IRIS Service Definition Manual*, pg. 27

Looking at Petitioner's dental records, it is clear that orthodontic treatment is a professional service intended to address the Petitioner's need for physical and medical treatment and its goal is to improve the Petitioner's health and to improve her functioning by improving her ability to chew and swallow food properly. She has been noted to have cranio-facial deformities involving her mouth, that make eating difficult such that she is at risk of choking. It was further noted that Petitioner had been experiencing pain related to her mouth. (Exhibit 2, pgs. 8-10; Exhibit 4; Exhibit H, pg. 4)

However, certain services are excluded from coverage under "Counseling and Therapeutic Services" those include:

- Inpatient Services
- Services provided by a physician
- Services available through the Medicaid State Plan or covered by other insurance, including Medicare
- Attendant costs, to assist participants in attending counseling and therapeutic services

*IRIS Service Definition Manual*, pg. 28

Wis. Admin. Code §107.07(4)(j) orthodontic services are generally considered a non-covered service:

- (4) Non-covered services; dentists and physicians. The following dental services are not covered under MA whether or not the service is performed by a dentist; physician; or a person under the supervision of a dentist or physician:

...

(j) Orthodontic services.

Further, Orthodontic treatment is not available to adults over age 20. *On-Line Provider Manual Topic #2905*<sup>5</sup> When it is covered for those under age 20 it is only for those with a severe, handicapping malocclusion. *Id at Topic #2909*

Petitioner turned 20 in 2014. Petitioner did not begin treatment until about February 2015. (See Exhibit 4) As such, the Medicaid State Plan will not cover orthodontic work for her. Consequently, [REDACTED] is incorrect in its assertion that Medicaid will pay for Petitioner's braces.

#### *Cost-Effectiveness*

There was some discussion regarding whether the Invisalign braces, in particular, were cost-effective. However, Petitioner's dental records corroborate the testimony of Petitioner's mother and indicate that the Petitioner engaged in self-injurious behavior when conventional spacers were placed in her mouth, such that she needed to be seen at Children's Hospital. (see Exhibit 4) As such, it would not be cost-effective to use conventional braces on the Petitioner, as she would likely try to remove the hardware, as she did with the spacers. Indeed, it is not uncommon for wire braces to cause discomfort and sores. I note that Petitioner's guardian reported that the Petitioner has responded more positively to the Invisalign braces and has not engaged in self-harm to try to remove them.

### **CONCLUSIONS OF LAW**

[REDACTED] / Department of Health Services incorrectly denied the Petitioner's request for coverage of Invisalign braces.

**THEREFORE, it is**

### **ORDERED**

That [REDACTED] approve coverage of the Invisalign braces, up to the amount not covered by Petitioner's private insurance. [REDACTED] shall take all administrative steps to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

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<sup>5</sup> The on-line provider handbook for fee-for-service Medicaid can be found at:

<https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=15&s=2&c=530>

The handbook indicates that coverage for individuals under age 20 will be approved, but only under certain extreme circumstances.

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

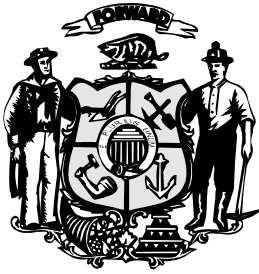
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 31st day of May, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 31, 2016.

Bureau of Long-Term Support  
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